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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In re

STEVE HENRY RAMOS,  
Debtor(s).

Case No. 10-11703-A

Chapter 7

D.C. No. PD-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF  
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

WELLS FARGO BANK, NA,  
Movant,

vs.

STEVE HENRY RAMOS, Debtor(s);  
ROBERT A. HAWKINS, Chapter 7 Trustee,  
Respondents.

LBR 4001-1 and 9014-1(f)(1)

DATE: June 8, 2010  
TIME: 1:30 p.m.  
CTRM: 11

2500 Tulare Street,  
Fresno, CA 93721-1318

1 Wells Fargo Bank, NA<sup>1</sup> ("Movant"), moves this court for an order terminating the automatic stay of  
2 11 U.S.C. § 362 as to Movant, so that Movant may commence and continue all acts necessary to  
3 enforce its security interest in real property generally described as 3916 Countryside Lane, Friant,  
4 California 93626.

5 On or about February 21, 2010, Steve Henry Ramos ("Debtor") filed a voluntary petition  
6 under Chapter 7 of the Bankruptcy Code, and Robert A. Hawkins was appointed as Chapter 7  
7 Trustee. As a result of said filing, certain acts and proceedings against Debtor and the bankruptcy  
8 estate are stayed as provided in 11 U.S.C. § 362.

9 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **MOVANT IS ENTITLED TO RELIEF FROM THE**  
13 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).**

14 **NO EQUITY**

15 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the  
16 debtor does not have any equity in the property and the property is not necessary to the debtor's  
effective reorganization.

17 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:  
18 § 362(d)(2) reflects congressional intent to allow creditors to  
19 immediately proceed against the property where the debtor has no  
20 equity and it is unnecessary to the reorganization, even where the  
debtor can provide adequate protection under § 362(d)(1). (Emphasis  
added).

21 Id. at 610 (emphasis added).

22 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated  
23 that in determining whether equity exists in the property for purposes of § 362(d)(2), all  
24 encumbrances are totalled, whether or not all the lienholders have joined in the request for relief  
25 from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th  
26 Cir. 1984).

27 \_\_\_\_\_  
28 <sup>1</sup> This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to  
receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004,  
notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize  
Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act  
as its agent for purposes of service under Fed. R. Bankr. P. 7004

1 An appropriate cost of sale factor should also be added to determine if the debtor has any  
2 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289  
3 (Bankr. S.D. Cal. 1982).

4 On or about January 23, 2004, Debtor, for valuable consideration, made, executed and  
5 delivered to American Brokers Conduit ("Lender") a Note in the principal sum of \$249,500.00 (the  
6 "Note"). Pursuant to the Note, Debtor is obligated to make monthly principal and interest payments  
7 commencing March 1, 2004, and continuing until February 1, 2034, when all outstanding amounts  
8 are due and payable. The Note provides that, in the event of default, the holder of the Note has the  
9 option of declaring all unpaid sums immediately due and payable. A true and correct copy of the  
10 Note is attached to the concurrently served and filed Exhibits to the Declaration in Support of  
11 Motion for Relief From Automatic Stay ("Exhibits") as exhibit A and incorporated herein by  
12 reference.

13 On or about January 23, 2004, the Debtor made, executed and delivered to Lender a Deed of  
14 Trust (the "Deed of Trust") granting Lender a security interest in real property commonly described  
15 as 3916 Countryside Lane, Friant, California 93626 (the "Real Property"), which is more fully  
16 described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs incurred as  
17 a result of the Debtor's bankruptcy case may be included in the outstanding balance under the Note.  
18 The Deed of Trust was recorded on January 29, 2004, in the Official Records of Fresno County,  
19 State of California. A true and correct copy of the Deed of Trust is attached to the Exhibits as  
20 exhibit B and incorporated herein by reference.

21 Subsequently, Lender's beneficial interest in the Deed of Trust was sold, assigned and  
22 transferred to Movant. A true and correct copy of the Corporation Assignment of Deed of Trust  
23 evidencing the Assignment of the Deed of Trust to Movant is attached to the Exhibits as exhibit C  
24 and incorporated herein by reference.

25 The obligation under the Note is in default as of January 1, 2010, for failure to make  
26 payments to Movant. As of March 23, 2010, the total obligation due and owing under the Note is in  
27 the approximate amount of \$227,069.73, representing the principal balance of \$226,191.51, interest  
28 in the sum of \$2,759.10 and other fees due in the amount of \$45.00, less an escrow balance in the

1 amount of \$1,925.98. This is an approximate amount for purposes of this Motion only, and should  
2 not be relied upon as such to pay off the subject loan as interest and additional advances may come  
3 due subsequent to the filing of the Motion. An exact payoff amount can be obtained by contacting  
4 Movant's counsel. Further, Movant has incurred additional post-petition attorneys' fees and costs in  
5 bringing the instant Motion. Moreover, the total arrears under the Note are in the approximate sum  
6 of \$5,397.42, excluding the post-petition attorneys' fees and costs incurred in filing the instant  
7 Motion.

8 **II.**

9 **RELIEF FROM STAY**

10 **LACK OF EQUITY**

11 Movant is informed and believes that, based on the Debtor's bankruptcy Schedules and  
12 Statements, the fair market value of the Property is approximately \$300,000.00. True and correct  
13 copies of the Debtor's bankruptcy Schedules "A" and "D" are collectively attached to the Exhibits as  
14 exhibit D and incorporated herein by reference.

15 Based on the above, Movant maintains that the equity in the Property is as follows:

16	Fair Market Value:	\$300,000.00
17	Less:	
18	Movant's Trust Deed	\$227,069.73
19	Bank of the West – 2 <sup>nd</sup> Deed of Trust	\$96,564.00
	Costs of Sale (8%)	<u>\$24,000.00</u>
	Equity in the Property:	\$<47,633.73>

20 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this  
21 is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to  
22 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

23 **III.**

24 **MOVANT IS ENTITLED TO RELIEF FROM THE**  
**AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).**

25 **CAUSE - LACK OF ADEQUATE PROTECTION**

26  
27 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate  
28 protection of its interest in the Property.

1 Movant submits that adequate protection in this case requires normal and periodic cash  
2 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to  
3 Movant, including all attorneys' fees and costs incurred in the filing of this motion.

4 Movant is informed and believes that Debtor is presently unwilling or unable to provide  
5 adequate protection to the Movant and there is no probability that adequate protection can be  
6 afforded to Movant within a reasonable time.

7 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.  
8 § 362(d)(1), based upon the failure of Debtor to provide adequate protection to Movant.

9 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

10 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by  
11 Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

12 2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

13 3. Granting Movant leave to foreclose on the Real Property and to enforce the security  
14 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of  
15 the Property;

16 4. Permitting Movant to offer and provide Debtor with information re: a potential  
17 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss  
18 Mitigation Agreement, and to enter into such agreement with Debtor;

19 5. Alternatively, in the event this court declines to grant Movant the relief requested  
20 above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to  
21 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust  
22 and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay  
23 when due (a) the monthly installments of principal and interest, as required under the Note;  
24 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order to  
25 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the  
26 filing of this motion;

27 ///

28 ///

1           6.       That the attorneys' fees and costs incurred by Movant for filing the instant Motion be  
2 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;  
3 and

4           7.       For such other and further relief as the court deems just and proper.

5 Dated: May 7, 2010

PITE DUNCAN, LLP

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7  
8                   /s/ Joseph C Delmotte CA SBN 259460  
9                   JOSEPH C DELMOTTE  
                    Attorneys for WELLS FARGO BANK, NA